

CALIFORNIA ACUPUNCTURE BOARD

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State of California
Department of Consumer Affairs
Gray Davis, Governor



October 6, 2003

Michael E. Alpert, Chairman
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

Dear Mr. Alpert:

The Board is submitting this written rebuttal to Norman Hertz's letter to the Commission, dated September 2, 2003. The Board feels compelled to respond to his inappropriate and inaccurate statements about the Acupuncture Board members. The Board will address each category in the order he presented them in his letter.

Mr. Hertz states:

➤ Members are Dishonest:

Mr. Hertz makes a sweeping assertion about all Board members past and current that is absolutely inaccurate. His entire paragraph regarding exam subversion relates to an incident that occurred almost 20 years ago and which related to only one member.

Mr. Hertz uses broad generality to imply that all board members, past and present, have exhibited such behavior. Five of the six current Board members were appointed between 2000-2001, and Mr. Hertz retired from the Department of Consumer Affairs, Office of Examination Resources (OER) in December 2001.

➤ Conflict of Interest by the Board Members:

He presents no evidence to support his contention that the clinical exam was unfair and that a conflict of interest exists with the members. The clinical was discontinued in fall 1999 by legislative action. The Board's former examination contractor, Cooperative Personnel Services (CPS), of Sacramento made a miscalculation of the pass/fail results on the fall 1998 exam. Upon discovering the error, the Board immediately initiated action to recalculate the results. CPS's error and recalculation had nothing to do with the efficacy and the administration of the clinical exam. The Board has believed that the clinical exam is a very important component of the licensing examination.

➤ Lack of Understanding of the Purpose of Testing by the Board:

The Board assumes Mr. Hertz is referring to the 1996/1997 exam contractor Psychological Services, Inc. (PSI), of Glendale, California. PSI's first clinical exam was not successful because they disregarded the advice of the Board's EO and Mr. Hertz, who then represented the Department of Consumer Affairs OER.

The EO and Mr. Hertz were insistent with PSI that the tried and proven format for the clinical exam be continued. PSI disregarded this advice and altered the established exam format, policies and protocols, the results of which lengthened the administrative time of the clinical exam. In response to the resultant time overruns, PSI released the morning candidates who had been sequestered until the afternoon candidates were registered and secured inside the testing site. The release of the morning candidates allowed them the opportunity to mix with the afternoon candidates and share confidential exam content. The Board considered this unsatisfactory and unprofessional performance and held a disciplinary meeting with PSI to discuss their decision. The Board required PSI to readminister the exam and they did so successfully. Shortly thereafter PSI and the Board mutually agreed to terminate their contract on the basis that PSI had proposed a new licensing exam format that represented a significant departure from the Board's traditional exam. The Board felt their new format may have had merit, but was not willing to proceed without further concept development and pretesting.

➤ Inability of the Acupuncture Board to Regulate the Profession:

Mr. Hertz gives no evidence to substantiate his claim that the Board cannot function as a regulating body. The Board conducts a minimum of four public meetings every year. The Board's highest number of public meetings occurred in 2001 when 14 were noticed and held around California. Mr. Hertz suggests that the Board was derelict by allowing public comment on his testimony to the Board. To the contrary, the Open Meetings Act requires the Board to allow public comment on issues which it is considering so that the Board may have the benefit of a diversity of opinion when engaging in the decision-making process.

Accomplishments of the Board over the last couple of years have been extensive and valid. Scrutiny of the Board and its procedures has been broad and thorough. The Board has been through two sunset review processes in 1997/1998 and 2001/2002.

The Board's 97/98 review was positive and the Joint Legislative Sunset Review Committee in a significant action elevated the Committee to an independent Board status. In March 2001, the Department of Finance's Office of State Audits and Evaluations completed an extensive review of the Board's financial and fiscal internal controls, the positive outcome of which reflected the Board was in compliance with the financial Integrity and State Managers' Accountability Act of 1983. In March 2002, the Department of Consumer Affairs' Internal Audit Office concluded a three-month program performance audit, wherein the Board was praised for its strict and rigorous compliance in adhering to government codes and requirements. These thorough and extensive reviews clearly confirm the capabilities and professional functioning of the Acupuncture Board. The Board's 2002-2003 Strategic Plan defines the Board's mission, vision, goals, objectives, processing time goals, quantifiable performance indicators, and resource assumptions. The plan is scheduled to be evaluated for compliance and revised in December 2003. In November 2001, the Board adopted the Occupational Analysis, which was conducted by OER at the request of the Board. A sampling of other accomplishments since 2000/2001 include, the Board wrote, distributed and implemented school site visit guidelines and a manual for school site visit teams in 2000; the Board developed and distributed a new consumer brochure in 2000-2001; the Board has reviewed, site visited and approved between two to five new acupuncture schools yearly; the Board has annually written, developed and distributed the licensee

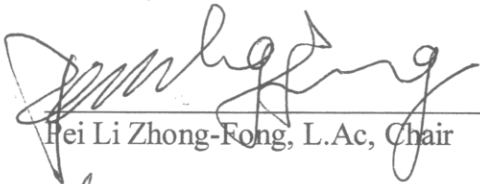
laws; and since fall 1999 the Board developed, designed, implemented, redesigned and continually updates the Board's website. Mr. Hertz has chosen to ignore the accomplishments and successes of the Board.

Mr. Hertz's recommendation to sunset the Board is unfounded, unwarranted and inappropriate. Mr. Hertz is very knowledgeable on testing methodologies and procedures that should be implemented to improve psychometric testing and has provided the Board with some very positive and constructive guidance. In fairness to the Board, the Commission should consult with Tracy Ferrel, current Manager of DCA OER, and others who know and have worked with the Board.

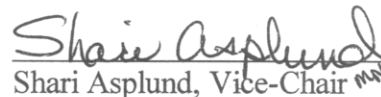
In conclusion, the Board wishes to emphasize again that it is in full cooperation with the LHC's mission and we commend the Commission for its thorough review. The Board remains clear in our proposals to the Commission, as follows:

- Amend B&P Code Section 4937 to add the Term "Diagnose."
- Revise and Codify *Legal Opinion 93-11* into Statutes and Regulations.
- Change Board's Name to "California Board of Acupuncture and Oriental Medicine."
- Increase the educational requirements for licensure to an entry-level of 4,000 hours.
- Retain the California Acupuncture Licensing Examination (CALE).
- Retain the Board's school approval process.

Sincerely,



Fei Li Zhong-Fong, L.Ac, Chair



Shari Asplund, Vice-Chair mm



Michael Eng, Public Member



Joan Chang, L.Ac, Professional Member



Min Mey Chang, Public Member



Justin Tin, Public Member